

Wachovia Corporation  
Legal Division  
NC0630  
One Wachovia Center  
301 South College Street  
Charlotte, NC 28288  
  
Tel 704 374-6611

Eugene M. Katz  
Senior Vice President and  
Assistant General Counsel  
Direct Dial: 704 383-7707  
Fax: 704 715-4494  
Email: [gene.katz@wachovia.com](mailto:gene.katz@wachovia.com)



**WACHOVIA**

November 13, 2006

**VIA ELECTRONIC MAIL**

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Electronic Address: [reg.comments@federalreserve.gov](mailto:reg.comments@federalreserve.gov)

RE: Proposed Agency Information Collection Activities, Report of Changes in  
Organizational Structure, Form FR Y-10 -- Request for Comment

Dear Ms. Johnson:

Wachovia Corporation ("Wachovia"), on behalf of itself and its subsidiaries, including Wachovia Bank, National Association ("Wachovia Bank"), appreciates the opportunity to comment on the proposed revisions to the Report of Changes in Organizational Structure, Form FR Y-10, as set forth in the Notice of Proposed Agency Information Collection Activities and Request for Comment by the Board of Governors of the Federal Reserve System ("Board").

The proposed revisions outline certain proposed modifications to the Report of Changes in Organizational Structure, Form FR Y-10, and specifically invites comments on "ways to enhance the quality, utility and clarity of the information to be collected and ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology." Wachovia respectfully requests that the Board reduce the burden of information collection by determining that reporting institutions no longer have to report monthly on the Board's Form FR Y-10 investments in low income housing tax credit ("LIHTC") limited partnerships ("LPs") or limited liability companies ("LLCs"), or changes in the status of such existing investments. As explained below, we believe that the need to report monthly on these investments presents an administrative burden for reporting institutions that is disproportionate to any regulatory or supervisory benefit that may be gained from such reporting. Moreover, this administrative burden is at odds with the benefits to be derived from encouraging financial institutions to invest in LIHTC projects.

Congress enacted the LIHTC in conjunction with the Tax Reform Act of 1986. The purpose of the LIHTC was to provide and promote private sector investment in the production of low-income housing. Some years ago, the federal banking agencies recognized the importance of attracting financial institution funding for LIHTC projects. The Office of the Comptroller of the Currency ("OCC"), in particular, authorized national banks to make equity investments in LIHTC partnerships and has codified regulations at 12 CFR Part 24 that address this activity. LIHTC partnerships are an effective way to attract private sector funding for residential development that primarily benefits low-to-moderate income persons.

Not only is this equity investment activity explicitly authorized for national banks (12 CFR 24.6(a)(4)), it also is eligible for favorable consideration as part of a bank's Community Investment Act ("CRA") evaluation. See, e.g., OCC Interpretive Letters No. 780 (May 5, 1997), 787 (June 10, 1997) and 800 (September 11, 1997). Wachovia has been a leader in investing in LIHTC projects for a number of years. Not only does Wachovia invest in LIHTC projects for its own portfolio, it also sells tax credits to third parties. Wachovia views its activities in this area as an integral part of its CRA compliance strategy.

Wachovia presently reports investments, through its community development corporation ("CDC") subsidiaries, in a large number of LIHTC LPs and LLCs, and adds to that number nearly every month. Wachovia's investment in these entities is entirely passive through ownership of non-voting limited partnership interests or equivalent interests in LLCs. The investments are structured as equity in order to secure the benefit of the tax credits allocated to the developer/taxpayer under the applicable Internal Revenue Code provisions, 26 U.S.C. Section 42 *et seq.*, and implementing Internal Revenue Service ("IRS") regulations.

Although these are essentially passive investments, Wachovia has the ability, under the LP or LLC agreements, to remove and (in some cases) replace the general partner or manager of the entity. This removal authority is included in these structures as a surrogate for a lender's right of foreclosure should the project run into difficulty. From a credit perspective, because these investments are equivalent to financings, in other circumstances Wachovia could protect its credit exposure through foreclosure. However, because these LIHTC transactions must be structured as equity rather than debt, the foreclosure option is not available; therefore, Wachovia builds into the structure the ability to remove and replace the general partner or manager as a surrogate for foreclosure, solely to mitigate its credit risk in the transaction.

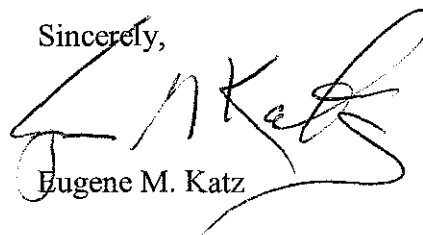
The FR Y-10 instructions state that, for purposes of the definition of "control", LP (and, we assume, LLC) interests are "generally considered" to be a class of voting securities unless the interests do not afford the limited partner the ability to participate in removing or appointing general partners (as well as meeting the other requirements of the definition of "nonvoting shares", which we believe these interest do). However, we

respectfully submit that in light of the public policy reasons favoring LIHTC investments, and the fact that they are effectively credit and not control relationships, that general presumption should not be given effect here. First, as noted above, the agencies have recognized the importance of encouraging LIHTC investments as a matter of public policy. Second, the right of removal is not intended as a control mechanism but simply as a surrogate for foreclosure to mitigate credit risk. Third, because of the large number of LIHTC transactions in which Wachovia engages, the need to monitor and report these investments as though they were garden-variety controlling interests in nonbanking companies has become a substantial administrative burden. We estimate that Wachovia must allocate the equivalent of one full-time employee to the preparation of the LIHTC LPs and LLCs for the monthly FR Y-10 filing. By contrast, preparation of the FR Y-10 reporting requirements for all of Wachovia's other investments and activities does not require one full-time employee. Fourth, because these investments are numerous but nearly identical in structure, there is little to be gained from a regulatory or supervisory standpoint for Wachovia to need to report, and the Board to need to review, these transactions on a monthly basis. Indeed, we submit that these LIHTC investments should properly be viewed as a single portfolio rather than as discrete interests in numerous nonbanking companies.

For the foregoing reasons, Wachovia respectfully requests that the Board include among its revisions to Form FR Y-10 a change to the reporting requirements and instructions that would create an exception for LIHTC investments. We believe that this would be consistent with other policy-based exceptions contained in the FR Y-10 instructions, such as those applicable to DPC companies, interests held as collateral and SBIC holdings, all of which, among others, are not required to be reported. Similar to those types of holdings, LIHTC investments are explicitly authorized activities for financial institutions, are part of the business of banking rather than an investment activity, and for that reason also should merit an exception from the reporting requirements. Further, because of the detailed requirements contained in IRS and banking agency regulations applicable to LIHTC investments, none of the Board's concerns about control over a nonbanking entity are present here.

Wachovia appreciates the opportunity to provide these comments on the Board's proposal. If you have any questions about these comments, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. M. Katz", with a stylized flourish extending from the bottom right.

Eugene M. Katz